

**Proposed Amendment of  
10A NCAC 27G .0813  
Waiver of Licensure Rules**

**Agency:** DHHS/ Division of Mental Health, Developmental Disabilities and Substance Abuse Services

**Contact:** Amanda J. Reeder  
Rule-making Coordinator and Hearing Officer  
Phone: 919-715-2780

**Impact:** Federal Impact: No  
State Impact: Yes (Anticipated savings)  
Local Government Impact: Yes (Anticipated savings)  
Private Sector Impact: Yes (Anticipated savings)  
Substantial Economic Impact: No  
(Total savings to all parties between \$1,495 and \$3,919)

**Authority:** G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147

**I. Overview:**

It is proposed that the rule be amended to:

- Reflect that waivers related to physical building design and equipment will stay in effect for a period of 10 years. A request for renewal of that waiver may be submitted and considered at that time.
- Reflect that waiver requests which are renewals relating to anything other than physical design and equipment shall not exceed the expiration date of the current license and must be renewed on an annual basis.
- Reflect that renewal request determinations can be made prior to licensure renewal, but would not go into effect unless the license is actually renewed.
- Reflect current terminology within the rule. (See Appendix A.)

**II. Rationale for Proposed Revisions:**

The proposed amendments will ensure timely processing of waiver requests, as well as ensure that waivers relating to physical building design and equipment will stay in effect for a period of 10 years.

### **III. Rulemaking Authority:**

The Commission has rulemaking authority for the subject matter of the proposed language pursuant to N.C.G.S. §122C-26. Licensure of mh/dd/sa facilities is performed by the NC Division of Health Service Regulation, as the Secretary of NC DHHS' designee.

### **IV. Analysis of Fiscal Impact:**

There are some administrative changes to the rule (i.e., referring to “area program and county authorities” as “Local Management Entities”), which will have no fiscal impact.

The state anticipates cost savings of state, local and private funds as it relates to the waivers for physical building and design lasting 10 years. Currently, all annual waivers are granted after review by two Department agencies, as well as input from the Local Management Entity. The proposed amendment will alter the term for provider agencies who request a waiver of licensure rules as they relate to issues regarding building design and equipment. This rule change will allow waiver terms for building design and equipment to increase from 1 year to 10 years. The state anticipates no fiscal impact regarding renewals of waivers for rules that are not related to construction. This is currently how NC DHHS handles all waiver requests, so there will be no change regarding those waiver requests.

The Division anticipates a cost savings for the state and local government, as well as the private sector, as those requests would be submitted and reviewed only every 10 years, rather than annually. Again, the process for reviewing waiver requests will not change. Waiver requests are currently granted effective based on the calendar year (i.e. effective January 1st- December 31st), the application deadline for requests will not change. Due to this it is anticipated that the rule revision will not be passed prior to this deadline for SFY 2011-2012, and the cost of granting of waivers for SFY 2012-2013 will not be any different than the current waiver process (assuming that all current annual waivers will be renewed). Savings related to this rule change will not be realized until SFY 2013-2014.

The Division of Health Service Regulation receives approximately 5-10 waiver requests for physical design and equipment per year. The DHSR Construction team reviews each request, as does the DHSR Mental Health Licensure Section. DHSR Administrative Support staff reviews each request, and the Division Director reviews and signs the request. Depending upon the information in the request and the amount of follow up required, this process can take 1-3 person hours per waiver request, or 5-30 person hours per annum spent on waiver requests related to physical design and equipment. These requests are all granted by management staff at an hourly expense rate of \$46.55 per hour (using midpoint salary for grade 80 plus fringe benefits of health insurance, retirement, and OASI-

DI). DHSR staff savings range will be \$233 (management staff X hourly rate X 1 Hour X 5 waiver requests) to \$1,397 (management staff X hourly rate X 3 Hour X 10 waiver requests).

The Division of Mental Health, Developmental Disabilities and Substance Abuse Services is required by rule to review these waiver requests. This requirement is not changed in the proposed amendment. On average, the Division staff members spend 3.5 hours per request, contacting the Local Management Entity located in the county of licensure for the facility for their feedback, and issuing its recommendation to the DHSR. Approximately 3 hours of this time is provided by professional staff with an hourly rate of \$34.56 (using midpoint salary for grade 73 plus fringe benefits of health insurance, retirement, and OASI-DI), and 30 minutes of time by administrative support staff at an hourly rate of \$20.68 (using midpoint salary for grade 59 plus fringe benefits of health insurance, retirement, and OASI-DI). With the assumption of 5-10 waiver requests for construction per year this would produce DMH/DD/SAS staff savings of between \$570 [(professional staff X hourly rate X 3 Hours X 5 waiver requests)+ (support staff X hourly rate X .5 Hours X 5 waiver requests)] and \$1,140 [(professional staff X hourly rate X 3 Hours X 10 waiver requests)+ (support staff X hourly rate X .5 Hours X 10 waiver requests)].

Local Management Entities (LMEs) would have some nominal staffing savings as well. It is not clearly known for each LME what position and salary that staff would be giving DMH/DD/SAS information regarding each waiver request, but for the sake of this note, the Division assumes they would be professional staff of similar qualification and salary as their DMH/DD/SAS counterparts. Their involvement would however be estimated at 2 hours of staff time per waiver request. The savings collectively to LMEs would be between \$346 (\$34.56 per hour X 2 Hrs X 5 requests) and \$691 (\$34.56 per hour X 2 Hrs X 10 requests).

Providers would have some nominal staffing savings similar to LMEs, as it is believed that each waiver request application takes about 2 hours of professional time to complete. The savings to providers would be between \$346 (\$34.56 per hour X 2 Hrs X 5 requests) and \$691 (\$34.56 per hour X 2 Hrs X 10 requests).

This analysis might be overestimating the annual savings since the calculation is based upon an assumption that there will be no further facilities built that would request these waivers for the next 10 years. The state, through historical experience, believes that providers have been reticent to build additional facilities whose operations could be subject to annual waiver submission. It is possible that passage of this rule could lead to additional capacity with this restriction being partly mitigated, which could result in a lower savings than forecasted. However, it is impossible to know how many providers have not built facilities due to this reason as they have not submitted waiver requests and the number who might build facilities after the amendment would be impossible to quantify.

## Appendix A

### 10A NCAC 27G .0813 WAIVER OF LICENSURE RULES

(a) The Secretary may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on the following:

- (1) the nature and extent of the request;
- (2) the existence of safeguards to ensure that the health, safety, or welfare of the clients residing in the facility will not be threatened;
- (3) the determination that the waiver will not affect the health, safety, or welfare of ~~clients;~~ clients residing in the facility;
- (4) the existence of good cause; and
- (5) documentation of governing body approval when requests are from ~~an area authority or county program~~ a Local Management Entity (LME) and contract agencies of an ~~area authority or county program,~~ LME, or documentation of governing body approval when requests are from private facilities not contracting with an ~~area authority or county program,~~ LME.

(b) Requests for waivers shall be sent to the Director, Division of Health Service Regulation, 2718 Mail Service Center, Raleigh, North Carolina 27699-2718.

(c) The request shall be in writing and shall contain:

- (1) the name, address and telephone number of the requester;
- (2) the name, address and telephone number of the facility for which the waiver is requested;
- (3) the rule number and title of the rule or requirements for which waiver is being sought;
- (4) a statement of facts showing:
  - (A) the reason for, and the nature and extent of, the request; and
  - (B) that the health, safety or welfare of clients will not be threatened;
- (5) documentation of governing body approval when requests are from an ~~area authority or county program~~ LME and contract agencies of ~~area/county programs,~~ the LME or documentation of governing body approval when requests are from private facilities not contracting with an ~~area authority or county program,~~ LME.

(d) Prior to issuing a decision on the waiver request, the Director of DHSR shall consult with the Director of DMH/DD/SAS, and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver request shall be issued in writing by the Director of DHSR and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the Commission, the Director of DMH/DD/SAS shall send a copy of the decision to all Commission members.

~~(f) The decision of the Secretary regarding a waiver request may be appealed to the Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.~~

~~(g) (f) Waivers related to physical building design and equipment, shall remain in effect for 10 years.~~

(g) Waivers other than those identified in (f) shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

(h) Renewal requests pursuant to this rule may be considered prior to the licensure renewal being finalized when the requesting party has submitted the required application materials and fee. A waiver granted prior to licensure renewal being finalized shall be contingent upon licensure renewal being granted. A waiver granted prior to the licensure renewal shall become effective upon the date of the license renewal and is not retroactive.

(i) If a facility closes or undergoes a change of ownership, the waiver expires with the effective date of the closure or change of ownership.

(j) The decision of the Secretary regarding a waiver request may be appealed to the Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

*History Note: Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147;*

*Eff. May 1, 1996;*

*Amended Eff. --, October 1, 2007.*